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QMS1/1216  
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EXAMINER	
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ART UNIT	PAPER NUMBER
3751	5

DATE MAILED: 12/16/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

# Office Action Summary

Application No.  
09/024,510

Applicant(s)  
Laudenberg

Examiner  
Steven O. Douglas

Group Art Unit  
3751



☒ Responsive to communication(s) filed on Feb 17, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-6 and 8-11 is/are rejected.

☒ Claim(s) 7 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by

Wakabayashi et al.

The Wakabayashi et al. reference discloses a carton (i.e. "pouch") filling system comprising a "hood" 44, a "fill tube" (31,32) with an associated "collar" 43, a "means for moving" 11, a "first nozzle" 42, and a "second nozzle" 46, as claimed.

In regard to claims 8-11, the method as claimed would be inherent during the normal use and operation of the device.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al. in view of Wakabayashi et al.

The Burton et al. reference discloses a pouch filling system for food-stuff substantially as claimed, including a “turret” 50, but does not disclose a “hood” with an associated “fill tube”, first nozzle” and second nozzle”. The Wakabayashi et al. reference discloses another food-stuff filling system having a “hood” with an associated “fill tube”, first nozzle” and second nozzle” (as discussed supra) in order to provide for a sterile filling environment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Burton et al. device to have a “hood” with an associated “fill tube”, first nozzle” and second nozzle” (as discussed supra) in view of the teachings of the Wakabayashi et al. reference in order to provide for a sterile filling environment.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wakabayashi et al. in view of Burton et al.

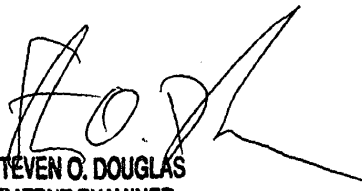
The Wakabayashi et al. reference discloses a filling system (as discussed supra), but does not disclose a “turret”. The Burton et al. reference discloses another filling system having a “turret”. It would have been obvious to one of ordinary skill in the art to substitute a “turret” as, for example, taught by the Burton et al. reference for the chain conveyor of the Wakabayashi et al. device wherein so doing would amount to mere substitution of one functional equivalent

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conveyor arrangement for another within the same art and the selection of any of these conveyor arrangements would work equally well in the Wakabayashi et al. device.

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Montalvo reference pertains to a pouch filling system with an opener comprising a gas nozzle, and the Froese et al. reference pertains to another pouch filling system with an associated turret.
7. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (703) 308-0891.

  
STEVEN O. DOUGLAS  
PATENT EXAMINER

SD

December 11, 1998